United Nations

Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996

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Supplement No. 37 (A/53/37)

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Note

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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Chapter I

Introduction

1. The second session of the Ad Hoc Committee established by the General Assembly by its resolution 51/210 of 17 December 1996 was convened in accordance with paragraph 9 of Assembly resolution 52/165 of 15 December 1997. The Committee met at Headquarters from 17 to 27 February 1998.

2. In accordance with paragraph 9 of resolution 51/210, the Ad Hoc Committee was open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency (IAEA).[1]

3. Pursuant to paragraph 10 of resolution 52/165, IAEA was invited to assist the Ad Hoc Committee in its deliberations and its representatives participated in the Committee's second session.

4. On behalf of the Secretary-General, Mr. Hans Corell, the Legal Counsel, opened the second session of the Ad Hoc Committee.

5. The Director of the Codification Division of the Office of Legal Affairs, Mr. Roy Lee, acted as Secretary of the Ad Hoc Committee, assisted by Ms. Sachiko Kuwabara-Yamamoto (Deputy Secretary), Mr. Mpazi Sinjela, Ms. Christiane Bourloyannis-Vrailas, Mr. David Hutchinson and Mr. Renan Villacis of the Codification Division.

6. It was generally agreed that the membership of the Bureau would remain the same as at the previous session, with the exception of one Vice-Chairman. The Bureau was thus constituted as follows:

Chairman: Mr. Philippe Kirsch (Canada)

Vice-Chairmen: Mr. Carlos Fernando Diaz (Costa Rica)
Mr. Hussein Mubarak (Egypt)
Mr. Rohan Perera (Sri Lanka)

Rapporteur: Mr. Martin Šmejkal (Czech Republic)

7. At the same meeting, the Ad Hoc Committee adopted the following agenda (A/AC.252/L.4):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Elaboration, pursuant to paragraph 9 of General Assembly resolution 51/210 of 17 December 1996 and paragraph 9 of resolution 52/165 of 15 December 1997, of an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments.
6. Adoption of the report.

8. The Ad Hoc Committee had before it a draft convention on the suppression of acts of nuclear terrorism submitted by the Russian Federation (A/AC.252/L.3) and an explanatory note to the draft convention submitted by the same delegation (A/AC.252/L.3/Add.1). The draft convention was used as a basis for the work of the Committee (see annex I).

Chapter II
Proceedings

9. The Ad Hoc Committee held a general exchange of views at its 5th and 6th meetings, on 17 and 18 February 1998.

10. At its 6th meeting, the Ad Hoc Committee decided to conduct its work in the form of a working group of the whole.

11. The working group proceeded in two stages. In the first stage, the Group considered the definition of the material and offences to be covered under the proposed convention with a view to clarifying its necessity as well as its objectives and substantive scope. For those purposes the working group reviewed draft article 1.

12. In the second stage of its work, the working group, without prejudice to the question of whether a new convention should be developed, conducted a first reading of the substantive provisions containing elements specific to the draft convention or not identical to those found in relevant treaties, namely, draft articles 2, 4 to 6, 8 and 10 to 14. The group also reviewed the preambular paragraphs and final provisions, as well as the remaining draft articles.

13. Written amendments and proposals were submitted and considered during the discussions (see annex II). Oral amendments and proposals were also discussed.

14. At its 7th meeting, on 27 February 1998, the Ad Hoc Committee adopted the report of its second session.

15. An informal summary of the discussions in the working group is attached to the present report (see annex III). The summary was prepared by the Rapporteur for reference purposes only and not as a record of the discussions.

16. The Ad Hoc Committee noted with appreciation the useful contribution made by the representatives of IAEA to its work.

Chapter III
Summary of the general debate

17. At the 5th meeting of the Ad Hoc Committee, the delegation of the Russian Federation introduced the draft convention on the suppression of acts of nuclear terrorism, contained in document A/AC. 252/L.3 and Corr.1 and 2, highlighting the potential threats posed by nuclear terrorism and the need to take effective countermeasures against such threats.

18. It was explained that existing international legal instruments were not sufficiently broad, either in their scope or in terms of the measures they provided, to counteract possible threats of nuclear terrorism and that the draft convention was intended to fill the gaps left by those instruments. It was noted that the scope of application of the 1980 Convention on the Physical Protection of Nuclear Material was limited to nuclear material used for peaceful purposes and did not extend to nuclear material of a military nature. The draft convention, it was said, sought to cover to the broadest extent the possible targets, forms and manifestations of acts of nuclear terrorism.

19. It was also remarked that the 1980 Convention did not distinguish acts of nuclear terrorism from other criminal acts involving the use of nuclear material. The draft convention

had the distinctive feature of defining acts of nuclear terrorism by reference to the purpose of such acts, thus separating them from other criminal acts.

20. Another difference from the 1980 Convention was the fact that the provisions of the draft convention dealt with a wide range of measures for combating nuclear terrorism, including post-crisis measures, such as the return to the rightful owners of a broad range of radioactive material and devices. In other aspects, it was noted that the draft convention closely followed the standard criminal law provisions to be found in other counter-terrorist conventions, which could be further strengthened by the inclusion of relevant provisions of the recently concluded International Convention for the Suppression of Terrorist Bombings.

21. Some delegations shared the view that there was a need to elaborate a new international convention for suppressing acts of nuclear terrorism and welcomed the initiative taken by the Russian Federation. It was suggested that while there was still considered to be a low probability of nuclear terrorism as compared with terrorist bombings or other forms of terrorist attacks, the extremely grave consequences of acts of nuclear terrorism and the widespread fear that could be generated by threats of such acts called for the immediate establishment of an effective legal regime. Existing international legal instruments, in their view, did not directly or adequately address the issue. The proposed convention, it was said, would usefully supplement those instruments by providing yet another avenue of cooperation for suppressing one of the most serious threats of terrorism. The point was made, however, that for it to be fully effective, the proposed convention should establish a clear and precise definition of the offences to be covered as well as a proper delimitation of its scope of application.

22. Some delegations, while supporting the elaboration of a new international legal instrument for combating nuclear terrorism, emphasized the need to develop a comprehensive legal regime for combating acts of international terrorism in accordance with General Assembly resolution 51/210. It was also stated that fundamental issues such as the definition of terrorism also needed to be addressed.

23. Other delegations, however, expressed concern as to overlap between the provisions of the proposed convention and those of related existing international instruments, especially the 1980 Convention on the Physical Protection of Nuclear Material, the 1996 Comprehensive Nuclear-Test-Ban Treaty and the 1997 International Convention for the Suppression of Terrorist Bombings. In their view, the scope of the proposed convention should be carefully reviewed in the light of those instruments in order to avoid creating an overlapping or conflicting regime that could undermine the effectiveness of existing legal instruments. In this connection the authors of the draft convention emphasized that it had purely anti-terrorist purposes and by no means was it meant to modify to any extent the existing regime for the physical protection of nuclear material. It was therefore considered important that any discussion of the draft convention be conducted on the basis of an initial identification of gaps in the existing international instruments, a matter on which both the Secretariat and IAEA could provide useful assistance. Having identified the gaps, it would also be necessary to consider the necessity for a new agreement and the nature and appropriate form of the legal instrument which might be developed, as well as certain questions of legal policy, including identification of the most appropriate forum for developing such an instrument.

24. Some delegations, while expressing support for the initiative aimed at adopting measures for suppressing nuclear terrorism, expressed the view that the most effective way of achieving that goal was to eliminate nuclear weapons altogether. Another approach that

was suggested was the establishment of nuclear-free zones, an approach that had already been implemented in some regions of the world.

25. Regarding the nature of the instrument to be drafted, some delegations proposed that the new instrument be adopted in the form of a protocol or amendment to the 1980 Convention, which would guarantee that there would be no derogation from or duplication of that Convention. It was pointed out in this connection that a mechanism for adopting such a protocol or amendment was provided in the 1980 Convention in the form of a review conference. Some other delegations, however, expressed a preference for the adoption of a separate convention, noting the limited scope of application of the 1980 Convention (in particular, the use of nuclear material for peaceful purposes) and the limited number of States Parties in comparison with the membership of the United Nations.

26. The view was also expressed that careful consideration had to be given to the choice of an appropriate forum for a discussion of the topic. It was suggested by some delegations that IAEA, which had the technical competence to deal with the issue of the use of nuclear materials for peaceful purposes, might be a more suitable forum for the drafting or adoption of the proposed instrument or its physical protection provisions. On the other hand, the view was expressed that IAEA had its specific mandate, that it was within the Ad Hoc Committee's mandate to undertake the drafting of the convention and that IAEA could be invited to provide expert advice to the Committee. In this connection, the view was expressed that, given the technical nature of the subject matter and the particular expertise of IAEA in this field, it was important to enlist the views as well as the participation of IAEA in the Ad Hoc Committee's deliberations.

27. With regard to the provisions of the proposed convention, it was considered important that they be formulated in a way that was consistent with and built upon existing counter-terrorism instruments. In particular, it was stated that by following closely the language of the 1997 Terrorist Bombings Convention, with appropriate adaptation, if necessary, the Committee could take advantage of that Convention's refinements of a number of standard provisions that had appeared in related legal instruments, as well as some of the new provisions in that instrument enhancing the effectiveness of measures to suppress acts of international terrorism. The suggestion was also made that the draft convention should contain only counter-terrorist provisions and should not incorporate provisions relating to the protection of nuclear material.

28. With regard to the definition of the offence of nuclear terrorism, it was stated that while the scope of the offence must be broad enough to cover the full range of terrorist conduct, it must also be drafted with sufficient precision to preclude unintended application to non-criminal activity. It was stated that, in the drafting of the convention, care should be taken to ensure that the rights of States to peaceful and other lawful uses of nuclear energy would not be affected by the application of the convention. There was a divergence of views regarding the inclusion in the draft convention of specific provisions on threats and on protection of the environment against nuclear terrorism. It was also stated that international humanitarian law should not be modified on the basis of this Convention.

29. In the view of some delegations, it should be clearly spelled out that the convention was limited in scope to acts carried out by natural persons acting in an individual capacity or as part of non-State groups. In this connection, some delegations suggested that it was important to take into account the relevant provisions of the 1997 Terrorist Bombings Convention. Other delegations, however, felt that it was important to include in the draft convention provisions dealing with acts of nuclear terrorism sponsored by a State.

30. The secretariat of IAEA presented its comments on questions related to definitions and a possible overlap between the draft convention and the 1980 Convention, as well as

on the provisions related to the physical protection of nuclear material and the exchange of information, and also made some general observations on the draft convention.[2]

Notes

[1] For the membership of the Ad Hoc Committee at its second session, see document A/AC.252/1998/INF/2.

[2] For the text of the statement see document A/AC.252/L.5.

Annex I

Draft text of the convention on the suppression of acts of nuclear terrorism submitted by the Russian Federation*

The States parties to this Convention,

Unconditionally condemning as criminal all acts of nuclear terrorism regardless of where, by whom and for what purposes they are committed,

Guided by the purposes and principles of the Charter of the United Nations and the Convention on the Physical Protection of Nuclear Material of 1980 and the determination to prevent the commission of acts of nuclear terrorism, which may have the gravest consequences and represent a threat to international peace and security,

Taking into account the Declaration on Measures to Eliminate International Terrorism, adopted by the General Assembly in its resolution 49/60 of 9 December 1994,

Noting the importance of cooperation in preventing, suppressing and investigating such acts,

Affirming the need to conduct a policy precluding any concessions to those who commit terrorist acts and that such incidents must be resolved, as far as is practically possible, by peaceful means,

Aware of the importance of developing a reliable system of measures to prevent nuclear terrorism in all its forms and manifestations,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. "An act of nuclear terrorism" means:

(a) (i) The use or threat of the use of nuclear material, nuclear fuel, radioactive products or waste, or any other radioactive substances, their radioactive properties or a combination of radioactive properties with toxic, explosive or other dangerous properties;

(ii) the use or threat of the use of any nuclear installations, nuclear explosive or radiation-dissemination devices and components thereof or objects of which they are components, including their destruction or the threat of their destruction, as well as the manufacture of home-made nuclear devices, for the purpose of causing death or serious injury to any person or harming his health, causing substantial damage to property or the environment, or compelling a natural or legal person, a group of persons, a State or an international organization to do or to refrain from doing any act;

(b) For the purposes set forth in subparagraph (a), the receipt or alienation without the permission of the competent authorities or through fraud, theft, forcible seizure, appropriation, possession, alteration or the transfer of any nuclear material, nuclear fuel, radioactive products or waste, or any other radioactive substances, any nuclear installations,

* Originally issued as A/AC.252/L.3 and Corr.1 and 2.

nuclear explosive or radiation-dissemination devices and components thereof or objects of which they are components belonging to any of the States Parties regardless of their location, as well as acts constituting a demand by threat or use of force or by any other form of intimidation for the release or transfer of such material, sources, substances, installations or devices and/or components thereof or objects of which they are components;

(c) Preparing to commit or attempting to commit an act set forth in subparagraphs (a) and (b) as well as any type of participation in committing, preparing or attempting to commit such acts or a threat to commit them.

2. "Nuclear material" means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; or any material containing one or more of the foregoing;

Whereby "uranium enriched in the isotope 235 or 233" means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

3. "Nuclear fuel" means nuclear material or any material capable of producing energy by means of a self-sustaining chain process of nuclear fission.

4. "Radioactive products" mean any radioactive material produced in the process of producing or using nuclear fuel, or any material which has become radioactive through radiation as a result of the production or use of nuclear fuel, with the exception of radio isotopes which have reached the final stage of manufacture and have thus become suitable for utilization for scientific, medical, agricultural, commercial or industrial purposes.

5. "Radioactive waste" means substances in any aggregate state not subject to further use, materials, goods, instruments, equipment and objects of biological origin in which the level of radionuclides exceeds those established by the standards and regulations of the States parties to the convention on the safety of radioactive waste management.

6. "Radioactive substances" mean any other substances, with the exception of those set forth in paragraphs 2, 3 and 4 of this article, which have radioactive properties that are hazardous to human life and health and/or may cause substantial damage to the environment.

7. "A nuclear installation" means:

(a) Any nuclear reactor, including reactors installed on vessels, aircraft or space objects for use as an energy source in order to propel such vessels, craft or objects or for any other purpose;

(b) Any plant used for the production, location, storage, processing, transport and other purposes of nuclear material, nuclear fuel, radioactive products or waste, or any radioactive substances;

(c) A composite of such plants considered as a single production, scientific or other complex.

8. "A nuclear explosive device" means any device capable of bringing about a nuclear chain reaction of explosive fission, for example, a nuclear weapon or a nuclear experimental device.

9. "A radiation-dissemination device" means any device capable of disseminating any type of radioactive materials by any means which pose the danger of contaminating a population and area.

Article 2

1. This Convention shall apply exclusively to acts by specific natural persons (in an individual capacity or as part of non-State groups or other associations) and its scope shall not include the questions of the non-proliferation of nuclear weapons or nuclear threats posed by States, international intergovernmental organizations or other subjects of international law.

2. Nothing in this Convention shall affect the immunity of vessels and aircraft belonging to a State and operated by it for military, customs or police purposes, or of space objects.

Article 3

Each State party shall adopt such measures as may be necessary to establish as criminal offences under its legislation the acts set forth in article 1, paragraph 1, of this Convention and shall make provision for appropriate penalties which take into account the grave nature of those offences.

Article 4

States parties shall cooperate in the prevention of acts of nuclear terrorism, particularly, by:

1. Taking all measures provided for under their legislation to prevent preparations in their respective territories for the commission of offences within or outside their territories, including the taking of measures to prohibit in their territory illegal activities by persons, groups or organizations which encourage, instigate, organize or participate in the commission of acts of nuclear terrorism or help to conceal such offences;

2. Exchanging information in the manner and conditions provided for under article 11 of this Convention and coordinating administrative and other measures taken to prevent the commission of such offences;

3. Adopting all necessary legislative, administrative and technical measures to ensure the physical protection of nuclear material, nuclear fuel, radioactive products or waste, radioactive substances, nuclear installations and nuclear devices as well as protection against illegal or unauthorized access to them by third parties.

Article 5

1. Each State party shall take such measures as may be necessary to establish its jurisdiction over any of the offences set forth in article 1, paragraph 1, of this Convention which are committed:

(a) In its territory or on board a vessel, aircraft or space object registered in that State;

(b) By any of its nationals or, if the State in question deems it advisable, by stateless persons who have their habitual residence in its territory;

(c) In order to compel that State to do or to refrain from doing any act; or

(d) In respect of or against a national of that State or a legal person connected with that State, if the State deems it advisable.

2. Each State party shall also take such measures as may be necessary to extend its jurisdiction over these offences in cases where the alleged offender is present in its territory and it does not extradite that person in accordance with article 8 of this Convention to any of the States referred to in paragraph 1 of this article.

3. This Convention shall not exclude the exercise of any criminal jurisdiction in accordance with national law.

Article 6

1. Each State party, in the territory of which an offence set forth in article 1, paragraph 1, of this Convention is committed, or in the territory of which an alleged offender is present, shall, in accordance with international law and its legislation, take measures to suppress an act of nuclear terrorism, including coercive measures, detect, expose, detain and take an alleged offender into custody or take any other necessary measures to ensure that person's presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. The State referred to in paragraph 1 of this article shall immediately make a preliminary inquiry concerning the facts in accordance with its legislation and shall promptly report its findings to the States required to establish jurisdiction in accordance with article 5 of this Convention and shall also indicate whether it intends to exercise jurisdiction.

3. Nothing in this Convention shall in any way affect the right of any State party to take the necessary measures referred to in this article with the consent of or in accordance with a request for assistance addressed to that State by a third State, if the offence is committed in the territory of a third State or if the alleged offender is present in the territory of a third State.

4. Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag[1] or on board aircraft not registered in those States.[2]

Article 7

1. If a State party in the territory of which an alleged offender is present does not extradite that person, it shall, without any undue delay, submit the case to its competent authorities for the purpose of prosecution and proceedings in accordance with the legislation of that State.

2. Any person in respect of whom proceedings are being carried out in connection with any of the offences set forth in article 1, paragraph 1, of this Convention shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided for such proceedings under the legislation of the State in the territory of which that person is present.

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[1] Wording not underlined is literally reproduced from article 9 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation of 1988.

[2] The underlined words are deemed reasonable to add in order to reflect the relevant provisions of the three conventions in the field of combating terrorism in the air.

Article 8

1. The offences set forth in article 1, paragraph 1, of this Convention, shall be deemed extraditable offences included in any extradition treaty existing between States parties. States parties shall undertake to include such offences as extraditable offences in all subsequent extradition treaties to be concluded between them.

2. If a State party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State party with which it has no extradition treaty, the requested State may, at its discretion, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 1, paragraph 1, of this Convention. Extradition shall be subject to the other provisions set forth under the legislation of the requested State.

3. States parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 1, paragraph 1, of this Convention as extraditable offences between themselves, subject to the provisions set forth under the legislation of the requested State.

4. Where necessary, the offences set forth in article 1, paragraph 1, of this Convention shall be treated by the States parties for the purposes of extradition as if they had been committed not only in the place in which they occurred but also in some place under the jurisdiction of the State party making the request for extradition.

5. A State party which receives more than one request for extradition from States which have established jurisdiction in accordance with article 5 of this Convention and which takes a decision not to undertake prosecution, shall, in choosing the State to which the alleged offender is to be extradited, duly take into account the interests and obligations of the State party in the territory of which the act of nuclear terrorism was committed.

Article 9

1. States parties shall afford one another the greatest possible assistance in connection with prosecution instituted in respect of the offences set forth in article 1, paragraph 1, of this Convention, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual legal assistance that may exist between them. In the absence of such treaties, States parties shall afford one another assistance in accordance with their domestic legislation.

Article 10

1. Upon the completion of the proceedings connected with an act of nuclear terrorism, if it is considered feasible, any nuclear material, nuclear fuel, radioactive products or waste or any other radioactive substances as well as nuclear installations, nuclear explosive or radiation-dissemination devices, including homemade devices and/or their components or objects of which they are components shall be returned to the State party, to which they belong or which was the State of their origin.

2. If the material, fuel, products, waste, substances, installations, devices, their components or objects of which they are components set forth in paragraph 1 of this article

do not belong to any of the States parties, or if none of those States was the State of their origin, a separate decision concerning their use shall be taken after consultations between the States concerned.

Article 11

1. States parties shall exchange information in order to prevent, suppress, uncover and investigate the offences set forth in article 1, paragraph 1, of this Convention and also in order to institute criminal proceedings against and punish persons guilty of committing those crimes. In particular:

(a) A State party shall take appropriate measures in order to inform without delay the other States referred to in article 5 of this Convention or States which, in its opinion, are concerned in respect of the commission of acts of nuclear terrorism as well as preparations to commit such acts about which it has learned, and also to inform, where necessary, international organizations;

(b) Where necessary, the States parties concerned shall exchange information with one another or with international organizations about measures being taken by them to prevent and suppress acts of nuclear terrorism, the reasons underlying those acts, the means to carry them out, the persons who have committed them and the methods used to prevent and suppress such acts;

(c) Each State party may, at its own discretion, communicate to another State party or international organization any other relevant information.

2. States parties shall take appropriate measures consistent with their domestic legislation to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State party or through participation in an activity carried out for the implementation of this Convention. If States parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

3. States parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to domestic legislation or which would jeopardize the security of the State concerned or the physical protection of nuclear material, nuclear fuel, radioactive products or waste, radioactive substances, nuclear installations, nuclear devices or their components or objects of which they are components.

4. States parties shall inform one another about their competent authorities and liaison points responsible for sending and receiving the information referred to in this article. Such authorities and liaison points must be accessible on a continuous basis.

Article 12

States parties shall conduct, through mutual agreement, consultations with one another directly or with the assistance of international organizations on all questions provided for under this Convention.

Article 13

Nothing in this Convention shall affect the obligations of States parties under the Charter of the United Nations or the rights and obligations of States parties arising from international treaties concluded by them previously or shall be directed against any State.

Article 14

1. In the event of a dispute between two or more States parties concerning the interpretation or application of this Convention, such States parties shall consult with a view to the settlement of the dispute by negotiation, or by any other peaceful means of settling disputes acceptable to all parties to the dispute.

2. Any dispute of this character which cannot be settled in the manner prescribed in paragraph 1 of this article shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In case of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.

3. Each State party may, at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2 above. The other States parties shall not be bound by the dispute settlement procedure provided for in paragraph 2 above, with respect to a State party that has made a reservation to that procedure.

4. Any State party which has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the depositary.

Article 15

1. This Convention shall be open for signature by all States in _____ from _____ 19__ until its entry into force.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. After its entry into force, this Convention will be open for accession by all States.

4. (a) This Convention shall be open for signature or accession by international organizations and regional organizations of an integration or other nature provided that such organization is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention;

(b) In matters within their competence, such organizations shall, on their own behalf, exercise their rights and fulfil the responsibilities which this Convention attributes to States parties;

(c) When becoming party to this Convention, such an organization shall communicate to the depositary a declaration indicating which States are members thereof and which articles of this Convention do not apply to it;

(d) Such an organization shall not hold any vote additional to those of its member States.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

Article 16

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the _____ instrument of ratification, acceptance or approval.

2. For each State ratifying, accepting, approving or acceding to the Convention after the date of deposit of the _____ instrument of ratification, acceptance or approval, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 17

1. A State party may propose amendments to this Convention. The proposed amendment shall be submitted to the depositary, who shall circulate it immediately to all States parties. If a majority of States parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States parties to attend such a conference to begin not sooner than 30 days after the invitations are issued. Any amendment adopted at the conference by a two-thirds majority of all States parties shall be promptly circulated by the depositary to all States parties.

2. The amendment shall enter into force for each State party that deposits its instrument of ratification, acceptance or approval of the amendment on the thirtieth day after the date on which two thirds of the States parties have deposited their instruments of ratification, acceptance or approval with the depositary. Thereafter, the amendment shall enter into force for any other State party on the day on which that State deposits its instrument of ratification, acceptance or approval of the amendment.

Article 18

1. Any State party may denounce this Convention by written notification to the depositary.

2. Denunciation shall take effect 180 days following the date on which notification is received by the depositary.

Article 19

The depositary shall promptly notify all States of:

(a) Each signature of this Convention;

(b) Each deposit of an instrument of ratification, acceptance, approval or accession;

(c) Any reservation or withdrawal in accordance with article 14;

(d) Any communication made by an organization in accordance with article 15, paragraph 4 (c);

(e) The entry into force of this Convention;

(f) The entry into force of any amendment to this Convention; and

(g) Any denunciation made under article 18.

Article 20

The original of this Convention, of which the _____ texts are equally authentic, shall be deposited with the _____, who shall send certified copies thereof to all States parties.

IN WITNESS WHEREOF the undersigned, being duly authorized, have signed this Convention, opened for signature at _____ on _____ 19___.

Annex II

Written amendments and proposals submitted by delegations

1. Proposal submitted by Belgium and France (A/AC.252/1998/WP.1/Rev.2)

Replace article 1 with the following:

Article 1

For the purposes of this Convention:

(a) "Radioactive material" means any material containing nuclides which disintegrate spontaneously (a process accompanied by the emission of one or more types of ionizing radiation, such as alpha, beta, gamma or neutron radiation) and which could pose a threat to human life or health and/or cause substantial damage to property or the environment. Radioactive materials include:

(i) Nuclear material as defined in subparagraph (b);

(ii) Nuclear fuel as defined in subparagraph (c);

(iii) Radioactive products as defined in subparagraph (d);

(b) (i) "Nuclear material" means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; or any material containing one or more of the foregoing;

(ii) "Uranium enriched in the isotope 235 or 233" means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;

(c) "Nuclear fuel" means any material capable of producing energy by means of a self-sustaining nuclear fission chain reaction;

(d) "Radioactive products" means any radioactive material or any substance that has become radioactive through radiation as a result of the production or use of nuclear fuel. These substances include materials, objects, instruments, equipment and products of biological origin containing nuclides whose concentrations or activities exceed those established by the standards of the competent State authorities;

(e) "Devices" include:

(i) "A nuclear energy-releasing device" means any device containing nuclear material, designed or having the capacity to release nuclear energy through an uncontrolled self-sustaining chain-reaction process of fission;

(ii) "A dissemination device" means any device designed or having the capacity to spread radioactive material with a view to contaminating a surface or a space;

(iii) "A radiation device" means any device designed or having the capacity to emit, from radioactive materials, radiation at a level exceeding that established by the standards of the competent State authorities.

Article 1 *bis*

1. Any person commits an offence within the meaning of this Convention if that person, unlawfully and intentionally, possesses or uses radioactive materials or devices, as defined in article 1, for the purpose of:

(a) Causing the death of, or seriously injuring, any person or seriously harming his health;

(b) Causing substantial damage to property or the environment;

(c) Threatening to cause the death of, or serious injury to, any person or serious harm to his health, or to cause substantial damage to property or the environment with a view to compelling a natural or legal person, an international organization or a State to do or to refrain from doing an act.

2. Any person also commits an offence if that person attempts to commit an offence within the meaning of paragraph 1, subparagraphs (a) or (b);

3. Any person also commits an offence if that person:

(a) Is an accomplice in an offence within the meaning of paragraphs 1 or 2; or

(b) Organizes the commission of an offence within the meaning of paragraphs 1 or 2 of this article or orders other persons to commit such offence; or

(c) Contributes in any other way to the commission of one or more of the offences referred to in paragraphs 1 or 2 by a group of persons acting in concert; such contribution must be deliberate and made either to facilitate the general criminal activity of the group or to serve its purposes, or in full knowledge of the group's intention to commit the offence or offences concerned.

2. Proposal submitted by the Republic of Korea (A/AC.252/1998/WP.2)

Article 1 *bis*

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally uses or threatens to use [nuclear material, nuclear fuel, radioactive products or waste or any other radioactive substances], their radioactive properties or a combination of radioactive properties with toxic, explosive or other dangerous properties; uses or destroys, or threatens to use or destroy, [any nuclear installations], [nuclear explosive or radiation-dissemination devices] and components thereof or objects of which they are components; [or home-made nuclear devices]:

(a) With the intent to cause death or serious bodily injury; or

(b) With the intent to cause substantial damage to property where such damage results in or is likely to result in major economic loss.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.

3. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraphs 1 or 2; or

(b) Organizes or directs others to commit an offence as set forth in paragraphs 1 or 2; or

(c) In any other way contributes to the commission of one or more offences as set forth in paragraphs 1 or 2 by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

3. Proposal submitted by Australia (A/AC.252/1998/WP.3)

Article 1 *bis*

1. Any person commits an offence within the meaning of this Convention if that person:

(a) Unlawfully and intentionally uses or threatens to use nuclear material, nuclear fuel, radioactive products, radioactive material, their radioactive properties or a combination of radioactive properties with toxic, explosive or other dangerous properties;

(b) Uses or threatens to use any nuclear installation, nuclear explosive or radiation dissemination devices and components thereof or objects of which they are components, including their destruction or the threat of their destruction, as well as the manufacture of home-made nuclear devices;

and does so for the purpose of:

(i) Causing death or serious injury to any person;

(ii) Harming the health of a person;

(iii) Causing substantial damage to property or the environment;

(iv) Compelling a natural or legal person or group of persons, State or international organization to do or refrain from doing any act.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

4. Proposal submitted by Mexico (A/AC.252/1998/WP.4)

Article 1

Paragraph 1

1. Add a new subparagraph (c):

"Acts constituting a demand by threat or use of force or by any other form of intimidation for the purpose of compelling a natural or legal person to release or transfer such material, sources, substances, installations or devices and/or components thereof or objects of which they are components".

2. The present subparagraph (c) would become subparagraph (d).

3. Add the following paragraph to the new subparagraph (d):

"Such participation must be intentional and for the purpose of collaborating with the aims or the general unlawful activity of the group or with a knowledge of the intention of the group to commit the criminal offence or offences in question".

5. Proposal submitted by the Netherlands (A/AC.252/1998/WP.5)

Article 1 *bis*

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally [possesses,] delivers, places, discharges, detonates or uses in any other way radioactive materials or devices:

(a^1)* With the intent to cause death or serious bodily injury, or serious harm to the health of a person; or

(a^2)* With the intent to cause death or serious bodily injury among the public or serious harm to the public health; or

(b) With the intent to cause substantial damage to property or the environment; or

(c) To threaten to cause death or serious bodily injury [among the public], or serious harm to the health of a person [to the public health], or to cause substantial damage to property or the environment in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1, subparagraph (a) or (b).

3. [*vide* article 2, paragraph 3, of the International Convention for the Suppression of Terrorist Bombings]

* The choice between a^1 and a^2 depends on whether or not acts between individuals should be covered by this Convention on terrorism.

6. Proposal submitted by Belgium (A/AC.252/1998/WP.6)

Article 2

Delete article 13 and replace article 2 with the following text:

1. (a) This Convention shall apply exclusively to acts by natural persons (in an individual capacity or on behalf of one or more other natural or legal persons), and its scope shall not include acts of States and international intergovernmental organizations;

(b) The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention.

2. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

7. Proposal submitted by China and Australia (A/AC.252/1998/WP.7)

Article 2

Add a new paragraph to article 2, as paragraph 3:

"This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State and the alleged offender is found in the territory of that State."

8. Proposal submitted by France (A/AC.252/1998/WP.8)

Amendment to article 4

1. *Idem.*

2. *Idem.*

3. Adopting all necessary legislative, administrative and technical measures to ensure the protection of radioactive material against illegal or unauthorized access to them by third parties.

9. Proposal submitted by the Republic of Korea (A/AC.252/1998/WP.9)

Article 2

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

2. Nothing in this Convention affects the immunities of vessels and aircraft owned or operated by a State for non-commercial purposes.

10. Proposal submitted by Belgium (A/AC.252/1998/WP.10)

Article 4

Delete article 4, paragraph 3.

11. Proposal submitted by China (A/AC.252/1998/WP.11)

Article 5

Redraft paragraph 1 (c) and 1 (d) as follows:

"(c) Against that State or in order directly to compel it to do or to refrain from doing any act; or

"(d) In respect of or against a national of that State or a legal person incorporated under the law of that State, if the State deems it advisable."

12. Proposals submitted by Lebanon (A/AC.252/1998/WP.12)

Preambular paragraphs

1. Add a seventh preambular paragraph to read:

"*Recalling* the advisory opinion of the International Court of Justice on the *Legality of the Threat or Use of Nuclear Weapons*, issued on 8 July 1996,[1] and the General Assembly resolutions on that opinion adopted thereafter,"

2. Add an eighth preambular paragraph to read:

"*Noting* that the activities of military forces of States are governed by rules of international law outside the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts or preclude prosecution under other laws,"

Reference: Eleventh preambular paragraph of the International Convention for the Suppression of Terrorist Bombings, resolution 52/164, annex.

3. Add the following notion to paragraph 1 (b) of article 1:

"Illegal dumping of radioactive wastes or radioactive substances, whether on the high seas or inland."

We propose that this addition be inserted after the word "alteration" in the third line of the present paragraph 1 (b).

[1] A/51/218, annex.

13. Proposals submitted by Germany (A/AC.252/1998/WP.13)

Article 1 and article 1 *bis*

Article 1

1. All definitions should be assembled in a separate article 1, which should precede the article describing the offence, now article 1. In this respect also the pattern provided by the International Convention for the Suppression of Terrorist Bombings and other United Nations instruments should be followed.

Article 1 *bis*

2. Germany intends to propose the following text for the article containing the description of the offence, replacing the present article 1, paragraph 1:

> "Each party shall adopt such appropriate measures as may be necessary to establish as criminal offences under its domestic law the following acts committed intentionally:
>
> "(a) The unlawful manufacture, treatment, storage, use, transport, export or import of
>
> "(i) Nuclear material; or
>
> "(ii) Other hazardous radioactive substances, that cause or are likely to cause death or serious injury to any person, substantial damage to the quality of air, soil, water, animals, plants or to property;
>
> "(b) The manufacture, procurement, storage, transfer or use of nuclear or other hazardous radioactive material or special devices (nuclear explosive or radiation-dispersal) for the purpose of:
>
> "(i) Endangering the life or limb of any person or property of substantial value by a nuclear explosion; or
>
> "(ii) Exposing large numbers of persons to ionizing radiation;
>
> "(c) The threat:
>
> "(i) To use nuclear or other hazardous radioactive material to cause death or serious injury to any person or substantial property damage; or
>
> "(ii) To commit an offence described in subparagraph (a) or (b) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;
>
> "(d) The attempt to commit an offence described in subparagraph (a);
>
> "(e) The participation in any offence described in subparagraphs (a) to (b)."

Explanatory memorandum

3. *Subparagraph (a).* Subparagraph 1 (a) follows the line of article 2, paragraph 1 (e), of the draft convention of the Council of Europe on the protection of the environment through criminal law and in principle the line of the Vienna Convention on Physical Protection of Nuclear Materials. It extends the scope of the offence in article 7, paragraph 1 (a), of the latter Convention in two ways: it is applicable not only to nuclear

material, but, based on practical cases that have occurred in the past in Europe, also to other hazardous radioactive substances such as caesium-131, cobalt-60 or strontium-90. Additionally, it includes cases where the conduct is likely to cause serious damage to the environment.

4. *Subparagraph (b).* Subparagraph (b) covers specific dangerous cases of preparatory acts that go beyond the Vienna Convention and the draft convention of the Council of Europe.

5. *Subparagraph (c).* Subparagraph (c) follows in principle article 7, paragraph 1 (e), of the Vienna Convention. The scope is adapted to the extension of the offence described in subparagraph (a).

6. *Subparagraphs (d) and (e).* Subparagraphs (d) and (e) take over common concepts. As paragraph 2 (b) already covers preparatory acts, subparagraph (d) refers only to the offence described in subparagraph (a).

14. Proposal submitted by Slovakia (A/AC.252/1998/WP.14)

Article 1 *bis*, paragraph 1 (a)

"(a) Killing or seriously wounding another person, or causing substantial damage to the environment or property".

15. Proposal submitted by Belgium (A/AC.252/1998/WP.15)

Article 5

Replace article 5 of document A/AC.252/L.3 with the following text:

1. Each State party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 1 when:

(a) The offence is committed in the territory of that State; or

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft or space object that is registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed in order directly to compel that State to do or to refrain from doing any act; or

(d) The offence is committed by a national of that State.

2. A State party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State; or

(b) The offence is committed against a legal person in accordance with its domestic law; or

(c) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or

(d) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(e) The offence is committed on board an aircraft that is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State party shall notify the Secretary-General of the jurisdiction it has established in accordance with paragraph 2 under its domestic law. Should any change take place, the State party concerned shall immediately notify the Secretary-General.

4. Each State party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 1 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States parties that have established their jurisdiction in accordance with paragraph 1 or 2.

5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State party in accordance with its domestic law.

16. Proposal submitted by the Republic of Korea (A/AC.252/1998/WP.16)

Article 10

1. Upon the completion of the extradition or prosecution proceedings, any nuclear material, nuclear fuel, radioactive products or waste or any other radioactive substances, as well as nuclear-explosive or radiation-dissemination devices, including homemade devices and/or their components or objects of which they are components, shall be returned to the State party that has ownership over them, except where it is not considered feasible physically or legally to return them.

2. (Deleted)

17. Proposal submitted by the Republic of Korea (A/AC.252/1998/WP.17)

Article 5

1. Each State party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 1 *bis* when:

(a) The offence is committed in the territory of that State or on board a vessel flying the flag of that State or an aircraft or space object that is registered under the laws of that State at the time the offence is committed; or

(b) The offence is committed by a national of that State.

2. A State party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State; or

(b) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or

(c) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(d) The offence is committed in an attempt to compel that State to do or abstain from doing any act.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State party shall notify [the Secretary-General] of the jurisdiction it has established in accordance with paragraph 2 under its domestic law. Should any change take place, the State party concerned shall immediately notify the Secretary-General.

4. Each State party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 1 *bis* in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States parties that have established their jurisdiction in accordance with paragraph 1 or 2.

5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State party in accordance with its domestic law.

18. Proposal submitted by China (A/AC.252/1998/WP.18)

Article 6

Delete paragraphs 3 and 4 of article 6.

19. Proposal submitted by Italy (A/AC.252/1998/WP.19)

Article 1 *bis*

In the text contained in document A/AC.252/1998/WP.1, insert a new paragraph reading:

"2. An offence shall also be deemed to have been committed by anyone who, being in possession of radioactive materials or devices, compels a natural or legal person, an international organization or a State to do or to refrain from doing an act by threatening to use the materials or devices in his possession."

Renumber subsequent paragraphs and amend the cross-references in them to refer also to the new paragraph 2.

20. Proposal submitted by Germany (A/AC.252/1998/WP.20/Rev.1)

Article 1 *bis*, paragraph 1

Article 1

Any person commits an offence within the meaning of this Convention if that person, unlawfully and intentionally:

(a) Manufactures (produces), treats, transports, processes, uses, exports or imports nuclear or other hazardous radioactive material that intentionally causes or is likely to cause death or serious bodily injury or substantial damage to property or the environment;

(b) Manufactures (produces), procures, possesses, transfers or uses nuclear or other hazardous radioactive material or special devices for the purpose of:

(i) Causing death or serious bodily injury; or

(ii) Substantial damage to property or the environment;

(c) Threatens:

(i) To use nuclear or other hazardous radioactive material to cause death or serious bodily injury or substantial damage to property in such a manner as to disturb the public peace; or

(ii) To commit an offence as described in subparagraph (a) or (b) in order to compel a natural or legal person, an international organization or a State to commit or to refrain from committing an act.

21. Proposal submitted by Austria and Japan (A/AC.252/1998/WP.21)

Article 11, paragraph 4

States parties shall inform the depositary of their competent authorities and liaison points responsible for sending and receiving the information referred to in this article. The depositary shall communicate such information regarding competent authorities and liaison points to all States parties. Such liaison points must be accessible on a continuous basis.

22. Proposal submitted by Belgium (A/AC.252/1998/WP.22)

Preamble

Insert a new paragraph at the end of the preamble reading:

"*Noting* that the activities of the armed forces of States are governed by rules of international law which are outside the purview of this Convention and that the exclusion of certain acts from the scope of the Convention neither excuses nor renders lawful acts which are otherwise unlawful, nor does it prevent the institution of proceedings under other laws."

23. Proposal submitted by Belgium (A/AC.252/1998/WP.23)

Article 18

Replace article 18, paragraph 2, by the following text:

"2. Denunciation shall take effect one year after the date on which notification is received by the depositary."

24. Proposal submitted by the Syrian Arab Republic (A/AC.252/1998/WP.24)

Preamble

Add a new paragraph reading:

"*Recalling* the Declaration of the Occasion of the Fiftieth Anniversary of the United Nations of 24 October 1995 (General Assembly resolution 50/6),

"*Recalling* General Assembly resolution 46/51 of 9 December 1991, which urges all States, unilaterally and in cooperation with other States, as well as United Nations organs, to contribute to the progressive elimination of the causes underlying international terrorism, and requests the other relevant specialized agencies and intergovernmental organizations to consider what further measures can usefully be taken to combat and eliminate terrorism."

Add a new paragraph, which would become the second preambular paragraph (similar to that which appeared in the International Convention for the Suppression of Terrorist Bombings), reading:

"*Considering* that the incidence of such acts of nuclear terrorism is an issue of grave concern to the whole international community".

Amend the second draft preambular paragraph to read:

"*Guided* by the purposes and principles of the Charter of the United Nations in general, and by those of maintaining international peace and security and strengthening friendly and cooperative relations among nations in particular, and by the Convention on the Physical Protection of Nuclear Material of 1980, ...".

Amend the fourth draft preambular paragraph to read:

"*Noting* the importance of international cooperation in order to put in place effective measures consistent with the national law of all States Parties to this Convention to prevent, suppress and investigate such acts,"

Amend the present fifth preambular paragraph to read (additions underlined):

"*Affirming* the need *for each State* to conduct a policy precluding any concessions to those who commit terrorist acts, *and acts of nuclear terrorism in particular*, etc."

Note: It would also be appropriate to include a separate article in the Convention warning of the dangers of making any concessions to those who commit acts of nuclear terrorism.

Add a new paragraph reading:

"*Recalling* General Assembly resolution 51/210 of 17 December 1996, and the eleventh preambular paragraph of the draft international convention for the suppression of terrorist bombings to the effect that the activities of the armed forces of States are governed by rules of international law which are outside the purview of this Convention and that the exclusion of certain acts from the scope of the Convention neither excuses nor renders lawful acts which are otherwise unlawful, nor does it prevent the institution of proceedings under other laws."

Add a new paragraph reading:

"*Recalling* the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons issued on 8 July 1996 (A/51/218) and the relevant resolutions adopted by the General Assembly."

Add a new paragraph reading:

"*Recalling also* the recommendations of the International Atomic Energy Agency annexed to the 1980 Convention on the Physical Protection of Nuclear Material."

25. Proposal submitted by the Syrian Arab Republic (A/AC.252/1998/WP.24/Corr.1)

Preamble

Replace the last proposal in A/AC.252/1998/WP.24 with the following:

Add a new paragraph reading:

"*Recalling also* the recommendations of the International Atomic Energy Agency concerning physical protection of nuclear material and facilities that reflect international perception regarding the minimum level for such protection."

26. Proposal submitted by the Syrian Arab Republic (A/AC.252/1998/WP.25)

Article 1

Divide the present article 1 into two articles, the first covering the scope of the Convention and the second giving the definitions.

Reword paragraph 1 (a) of the present article 1 to read:

"For the purposes of this Convention:

1. 'An act of nuclear terrorism' means:

An illegal act carried out by persons as individuals, as governmental or non-governmental groups or as some other grouping, for the purpose of causing death or serious injury to any person or harming his health, causing substantial damage to property or the environment, or compelling a natural or legal person, a group of persons, a State or an international organization to do or to refrain from doing any act, by means of:

(a) (i) The use or threat of the use of nuclear material, ...

(ii) The use or threat of the use of any nuclear installations, ..."

In subparagraph (b), *after* "possession, alteration" *add*

"or burying nuclear waste or nuclear materials in an illegal manner on the territory of a third party, or dumping such waste in the sea,".

Subparagraph (c) should remain unchanged.

Paragraphs 2-9 should be included in an article which deals with definitions.

Paragraph 5: Amend the name of the convention which appears in this paragraph to read:

"The joint convention on the safety of spent fuel management and the safety of radioactive waste management."

Article 2

Delete the present article 2 and replace it with the following paragraphs:

"1. Nothing in this Convention shall affect the rights, obligations and other responsibilities of States and individuals under international law, and in particular the purposes and principles of the Charter of the United Nations, and under international humanitarian law.

2. This Convention shall not apply to the activities of armed forces during armed combat as defined by international humanitarian law, since it is that law which governs those activities.

3. This Convention shall not apply to the armed disputes recognized by the Geneva Conventions of 1949 and the Protocols, and by the 1997 Geneva Protocol I, article 1, paragraph 4, which deals with peoples struggling against a colonialist power, foreign occupation and racist regimes in exercise of their right to self-determination. This principle is also embodied in the Charter of the United Nations and the declaration of the principles of international law concerning friendly relations and cooperation between States in accordance with the Charter."

27. Proposal submitted by the Syrian Arab Republic (A/AC.252/1998/WP.26)

Article 5

Paragraph 1 of the article should be replaced by provisions taken from article 6, paragraphs 1 and 2, of the International Convention for the Suppression of Terrorist Bombings, as follows:

"1. Each State party shall take such measures as may be necessary to establish its jurisdiction over the offenses set forth in article 1, paragraph 1, when:

(a) The offence is committed in the territory of that State; or

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time that offence is committed; or

(c) The offence is committed by a national of that State.

"2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State; or

(b) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(c) The offence is committed in an attempt to intimidate, coerce or exact vengeance from the civilian population of that State or to compel that State to do or abstain from doing any act."

Present paragraph 2 should remain unchanged and should be renumbered as paragraph 3.

Present paragraph 3 should be retained and renumbered as paragraph 4. The wording of article 6, paragraph 5, of the International Convention for the Suppression of Terrorist Bombings is to be preferred, as follows:

"4. This Convention does not exclude the exercise of any criminal jurisdiction established by a State party in accordance with its domestic law."

Article 6

Paragraph 1 should be reworded as follows:

"1. Each State Party in the territory of which an offence set forth in article 1, paragraph 1, of this Convention is committed, or in the territory of which an alleged offender is present, shall, in accordance with international law and its legislation and when convinced that justifying circumstances exist, take that person into custody or take other measures, in accordance with its legislation, to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted."

Paragraph 2:

"2. That State shall immediately conduct a preliminary inquiry in accordance with its legislation and shall promptly report its findings ..."

Paragraph 3 should remain unchanged.

Paragraph 4 should remain unchanged.

Article 8

Replace paragraphs 1, 3 and 5 of the draft with [provisions taken from] the corresponding paragraphs [of article 9] of the International Convention for the Suppression of Terrorist Bombings, as follows:

"1. The offences set forth in article 1, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty in force between any of the States Parties. States parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

"3. States parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 1, paragraph 1, as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

"...

"5. The provisions of all extradition treaties and arrangements between States parties with regard to offences set forth in this Convention shall be modified as between States Parties to the extent that they are incompatible with this Convention."

The provisions of article 12 of the International Convention for the Suppression of Terrorist Bombings should either be added to this article as a new paragraph or included as a separate article 8 *bis*, as follows:

"Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 1, paragraph 1, has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political opinions or causing prejudice to that person's position for any of these reasons."

28. Proposal submitted by the Syrian Arab Republic (A/AC.252/1998/WP.27)

Article 12

Delete the words "through mutual agreement", and add "*or through the depositary* or with the assistance of international organizations" after "consultations with one another directly".

It would be better to incorporate this article into article 14, as a separate paragraph.

Article 13

The article should be supplemented with the provisions of articles 17 and 18 of the International Convention for the Suppression of Terrorist Bombings, and the words "or shall be directed against any State" should be deleted.

Article 14

All the means for the peaceful settlement of disputes stipulated in the Charter of the United Nations should be retained, and there should be no obligatory referral to the International Court of Justice. Such referral should remain optional and should be invoked when all the possible means stipulated have been exhausted.

29. Proposal submitted by the Republic of Korea (A/AC.252/1998/WP.28)

Amendment to Article 6 and new Article 10

Article 6

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence as set forth in article 1 *bis* may be present in its territory, the State party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Where the measures referred to in paragraph 2 of the present article are being taken, the State party having a claim to jurisdiction in accordance with article 5, subparagraph 1 (b) or 2 (c), may invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

4. When a State party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General, the States parties which have established jurisdiction in accordance with article 5, paragraphs 1 and 2, and, if it considers it advisable, any other interested States parties, of the fact that that person is in custody and of the circumstances which warrant that person's detention. The State

which makes the investigation contemplated in paragraph 1 of the present article shall promptly inform the said States parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 10

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable international law, including international law of human rights.

30. Proposal submitted by the Republic of Korea (A/AC.252/1998/WP.29)

Amendments to Article 8

Paragraphs 1 to 5 should be the same as article 9 of the 1997 International Convention for the Suppression of Terrorist Bombings.

Paragraph 6 should read as follows:

"6. A State party which receives more than one request for extradition from States which have established jurisdiction in accordance with article 5 of this Convention and which decides not to prosecute shall, in selecting the State to which the offender or alleged offender is to be extradited, pay due regard to the interests and responsibilities of the State party in the territory of which the act of nuclear terrorism was committed."

31. Proposal submitted by the Republic of Korea (A/AC.252/1998/WP.30)

Amendment to Article 11

Replace the current paragraph 1 with the following:

"1. Where necessary, the States parties concerned shall exchange information with one another or with international organizations about measures being taken by them to prevent and suppress acts of nuclear terrorism, including the methods used to prevent and suppress such acts."

32. Proposal submitted by the Republic of Korea (A/AC.252/1998/WP.31)

Article 14

1. Any dispute between two or more States parties concerning the interpretation or application of this Convention which cannot be settled through negotiation or any other peaceful means of settling disputes within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one

of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by the obligation to submit such dispute to arbitration set forth in paragraph 1. The other States parties shall not be bound by paragraph 1 with respect to any State party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General.

33. Proposal submitted by the Libyan Arab Jamahiriya (A/AC.252/1998/WP.32/Rev.1)

Preamble

Add two paragraphs reading:

"*Recognizing* the importance of drawing up a universally agreed definition of international terrorism,

"*Recalling* General Assembly resolutions affirming that nuclear disarmament is a fundamental factor in the safeguarding of international peace and security and expressing appreciation of the advisory opinion delivered on 8 July 1996 by the International Court of Justice on the legality of the threat or use of nuclear weapons,"

Article 1

At the end of subparagraph (b), add:

"The illegal dumping of nuclear waste at sea or on the territory of other countries, and transporting such waste transnationally."

Article 2

Replace the article by the following:

"1. This Convention shall apply to acts of nuclear terrorism by natural or legal persons, including States and international organizations, operating on their own behalf or on behalf of others.

"2. Nothing in this Convention shall affect the rights, obligations and other responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, and under international humanitarian law."

Article 10

At the end of each of paragraphs 1 and 2 add:

"in consultation with the relevant international organizations and in particular with the International Atomic Energy Agency."

Article 13

At the end of the article add:

"Nothing in this Convention shall permit a State party to exercise jurisdiction in the territory of any other State, or assume duties for which any other State party is responsible pursuant to its national law."

34. Proposal submitted by Croatia and Switzerland (A/AC.252/1998/WP.33)

Amendment to Article 4

Amend paragraph 3 to read as follows:

"3. Adopting all necessary measures to: ensure the protection of radioactive materials and facilities against illegal or unauthorized use thereof or access thereto by third parties; establish effective controls against illicit trafficking; and in doing so, take into account the recommendations of the International Atomic Energy Agency, which shall serve as a focal point for consultation, cooperation and exchange of information for the purpose of the above."

35. Proposal submitted by Australia (A/AC.252/1998/WP.34)

Amendments to Articles 7, 8 and 9

1. Article 7: delete the article.

2. Article 8: delete paragraphs 1 to 4.

3. Article 9: delete the article.

4. Replace with the following provisions of the International Convention for the Suppression of Terrorist Bombings:

Article 8

Article 9

Article 10

Article 11

Article 12

Article 13

Article 14

5. Add the text of paragraph 5 of article 8 to article 9 of the International Convention for the Suppression of Terrorist Bombings as a separate paragraph 6.

36. Proposal submitted by Belgium (A/AC.252/1998/WP.35)

Replace Article 7 of the draft contained in A/AC.252/L.3 with the following:

"Article 7

"1. The State party in the territory of which the alleged offender is present shall, in cases to which article 5 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

"2. Whenever a State party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1."

Include a new article 9 *bis*:

"Article 9 *bis*

"Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights."

37. Proposal submitted by the United States of America (A/AC.252/1998/WP.36)

Divide the present article 1 into two articles. The new first article would contain the following technical definitions to replace those currently in article 1, paragraphs 2 to 9.

Article 1

For the purposes of this Convention:

"1. 'Nuclear material' means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope *235* or *233*; uranium containing the mixture of isotopes occurring in

nature other than in the form of ore or ore residue; or any material containing one or more of the foregoing;

"Whereby 'uranium enriched in the isotope 235 or 233' means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;

"2. 'Other radioactive material' means material, other than that defined in paragraph 1 above, which contains nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation such as alpha-, beta-, neutron particles and gamma rays) and which material may, due to its radiological properties, cause death, serious bodily injury or extensive destruction to property;

"3. 'Nuclear facility' means:

(a) Any nuclear reactor, including reactors installed on vessels, vehicles, aircraft or space objects for use as an energy source in order to propel such vessels, craft or objects or for any other purpose;

(b) Any plant or conveyance being used for the production, location, storage, processing or transport of nuclear material;

"4. 'Radiation device' means:

(a) Any nuclear explosive device;

(b) Any radiation dissemination device."

38. Proposal submitted by the Republic of Korea (A/AC.252/1998/WP.37)

Article 8 *bis*

None of the offences set forth in article 1 *bis* shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 8 *ter*

Without prejudice to paragraph 1 of article 7 of this Convention, nothing in this Convention shall be interpreted as imposing an obligation to extradite, if the requested State party has substantial grounds for believing that the request for extradition for offences set forth in article 1 *bis* has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

39. Proposal submitted by the Islamic Republic of Iran (A/AC.252/1998/WP.38)

Add the following paragraphs to the preamble:

"*Emphasizing* that the responsibility for the establishment, implementation and maintenance of a physical protection system for nuclear material, devices and installations within a State rests entirely with that State,

"*Stressing* the inherent right of all States to engage in research, production and use of nuclear energy for peaceful purposes."

40. Proposal submitted by the Holy See (A/AC.252/1998/WP.39)

Article 5

Each State party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable regardless of where, by whom and for what purposes they are committed, and are punished by penalties consistent with their grave nature.

Annex III

Informal summary of the discussions in the Working Group, prepared by the Rapporteur

Preamble

1. Concerning the second preambular paragraph, there was a proposal to make a reference to the Purposes and Principles of the Charter the subject of a separate paragraph. There was also a proposal to make specific reference to the Purposes of maintaining international peace and security and strengthening friendly relations and cooperation among States (see A/AC.252/1998/WP.24).

2. With regard to the third preambular paragraph, it was suggested to add a reference to the 1996 Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism. A suggestion was made to replace the paragraph with the text of the second preambular paragraph of General Assembly resolution 52/165 of 15 December 1997. Opposition was voiced to the latter proposal.

3. As to the fourth preambular paragraph, it was suggested to insert a reference to punishment. There was also a suggestion to amend the paragraph so as to place emphasis on international cooperation in accordance with national law (ibid.).

4. It was suggested to amend the fifth preambular paragraph by inserting "for each State" after "need" and to add a specific reference to acts of nuclear terrorism (see A/AC.252/1998/WP.24).

5. There was a general proposal to incorporate those paragraphs from the preamble of the International Convention for the Suppression of Terrorist Bombings which were of

relevance to the present document. Specific mention was made in that regard of its third (see A/AC.252/1998/WP.12), tenth (see A/AC.252/1998/WP.24) and eleventh (see A/AC.252/1998/WP.12 and WP.22) preambular paragraphs. On the other hand, it was also suggested that it would be sufficient simply to recall the Terrorist Bombings Convention.

6. A number of other proposals for additional paragraphs were advanced. It was suggested to include a paragraph recalling General Assembly resolution 46/51 of 9 December 1991, in particular its paragraphs 6 and 11 (see A/AC.252/1998/WP.24). It was also suggested to include a reference to the advisory opinion of the International Court of Justice on the *Legality of the threat or use of nuclear weapons* (see A/AC.252/1998/WP.12). There was, however, opposition to both of those proposals. There were also proposals to add paragraphs recognizing the importance of a universally agreed definition of international terrorism (see A/AC.252/1998/WP.32/Rev.1); recalling General Assembly resolutions on the importance of nuclear disarmament (ibid.); emphasizing the responsibility of a State for the establishment, implementation and maintenance of a physical protection system for nuclear material, devices and installations on its territory (see A/AC.252/1998/WP.38); stressing the inherent right of all States to engage in research, production and use of nuclear energy for peaceful purposes (ibid.); and recalling recommendations of the International Atomic Energy Agency (IAEA) for physical protection of radioactive materials and facilities (see A/AC.252/1998/WP.24/Rev.1). It was also suggested that, rather than adding paragraphs to the preamble, efforts should be made to keep the preamble short and focused on the specific objectives of the Convention.

Article 1

General comments

7. There was general agreement that the focus of the definition should be on combating terrorist acts. There was also general agreement to the effect that all definitions should be assembled in article 1, which should precede the article describing the offences currently contained in article 1 *bis*. It was suggested that the structure provided by the 1997 International Convention for the Suppression of Terrorist Bombings should be followed (see A/AC.252/1998/WP.13).

Specific comments

8. The following proposals were made:

(a) To base the definition on the proposals made by the International Atomic Energy Agency (IAEA) so as to avoid possible deviations or contradictions (see A/AC.252/1998/WP.1/Rev.2);

(b) To define the term "radioactive material" by reference to material which contains nuclides and disintegrates spontaneously and which could pose a threat to human life or health or causes substantial damage to property or the environment (see A/AC.252/1998/WP.1/Rev.2);

(c) To add a new subparagraph (c) to paragraph 1 defining acts constituting a demand by threat or use of force or any other form of intimidation; the current subparagraph (c) would become subparagraph (d). It was also proposed to include additional language

in the new paragraph (d) which would internationalize the offence of participation in the unlawful activity (A/AC.252/1998/WP.4);

(d) To define the term "nuclear material" in paragraph 2 of article 1 by reference to article 20 of the IAEA statute;

(e) To create a generic term for "radioactive material";

(f) To use two generic terms, namely "nuclear material" and "other radioactive material";

(g) To delete the definition of "nuclear fuel" from the draft;

(h) To include the term "precursors" in the definitions;

(i) To delete paragraph 7, which defines the term "nuclear installation";

(j) To delete paragraph 8, defining the term "nuclear-explosive device";

(k) To delete paragraph 9, which defines the term "radiation-dissemination device";

(l) To exclude from the definitions devices that are covered by the 1997 International Convention for the Suppression of Terrorist Bombings;

(m) To make it more specific that material used for military purposes is excluded from the Convention;

(n) To divide the present article into two articles, the first covering the scope of the Convention and the second giving the definitions; and to redraft the first paragraph of present article 1 (see A/AC.252/1998/WP.25);

(o) To add at the end of subparagraph (b) of article 1 reference to illegal dumping of nuclear waste at sea or on the territory of other countries, as well as transporting such waste transnationally (see A/AC.252/1998/WP.32/Rev.1); or reference to illegal dumping of radioactive wastes or radioactive substance on high seas or inland (see A/AC.252/1998/WP.12);

(p) To divide article 1 into two articles. The first would deal with technical definitions, which would replace those currently in paragraphs 2 to 9 of article 1. "Nuclear material" and "other radioactive material" would be used and "nuclear fuel", "radioactive products", "radioactive waste" and "radioactive substances" would be deleted. "Nuclear installation" would be replaced by "nuclear facility", which would be defined to include nuclear reactors and plants or conveyances associated with nuclear material (see A/AC.252/1998/WP.36).

Article 1 *bis*

9. As to the acts of nuclear terrorism found in article 1 of the draft, the Russian Federation indicated that the "purpose" found in subparagraph (a) (ii) was also applicable to subparagraph (a) (i). It was suggested that (i) and (ii) of (a) could be merged. Preference was expressed for the use of the words "unlawful" or "without lawful authority" to qualify the acts. There was opposition to that suggestion.

10. Divergent views were expressed regarding the reference to "terrorism" in the definition of crimes.

11. The suggestion was made to move the stipulation of purpose from the end to the chapeau. Although preference was expressed for the use of the concept of "purpose", the point was made that the concept of "intent" should be used. It was considered preferable

to include the element of "intent" in the chapeau. A proposal was made to include a separate subparagraph on demand for material based on article 1, subparagraph (b), of the draft (see A/AC.252/1998/WP.4).

12. There was a trend to group all the offences under a new article 1 *bis*, following the model of the 1997 International Convention for the Suppression of Terrorist Bombings. The view was expressed that a more precise definition of crimes was desirable. In this regard, several proposals were put forward (see A/AC.252/1998/WP.1/Rev.2, A/AC.252/1998/WP.2, A/AC.252/1998/WP.3, A/AC.252/1998/WP.5, A/AC.252/1998/WP.13, A/AC.252/1998/WP.19 and A/AC.252/1998/WP.20/Rev.1). The proposal was made to replace the word "use" by specifying acts as in the Terrorist Bombings Convention (article 2, paragraph 1). A suggestion was also made to add "acquire" to "use or possess". Another suggestion was also made to add "destroy" to "use or possess".

13. A proposal was made to specify that the acts should be committed by "persons in individual capacity or as part of non-state groups or other associations". The deletion of the reference to "devices" was also suggested.

14. It was suggested to include a specific provision on "threat". Views diverged on how the threat offence should be defined. The point was made that such a provision should be based on article 3, paragraph 2, of the 1988 Rome Convention. Others suggested that the threat be credible or require possession in order to constitute an offence. Preference was also expressed for excluding any reference to "threat".

15. The point was made that it was unnecessary to include the manufacture of nuclear or nuclear-related products, while views to the contrary were also expressed. Divergent views were held as to whether the acts should cover the "installations" themselves. The point was also made that "installations" could be defined narrowly only to include those containing nuclear materials.

16. The suggestion was made to include a specific provision regarding "harm to human health", in particular that of a grave nature. The view was expressed that the contamination of property and of the environment should also be criminalized (see A/AC.252/1998/WP.25). In that regard, it was noted that the qualification of "substantial" to the damage caused would be subjective. The point was also made that the concept of damage to property, health or the environment was too vague as an element of composition of a crime (see A/AC.252/1998/WP.2). It was suggested that the transfer of nuclear material and the dumping of waste should also be considered a crime. Divergent views were expressed concerning the inclusion of a specific provision on environmental damage.

17. As regards ancillary crimes, a proposal was made that would criminalize participation carried out with the aim of furthering the general criminal activity or in the knowledge of the intention of the group. The suggestion was made to replace the draft ancillary offences with the text of article 2 (3) of the Terrorist Bombings Convention. There was opposition to the extension of offences of attempt and complicity to the substantive crime of threat. Views were expressed by some delegations that preparation, contribution and participation should not be criminalized.

Article 2

18. With respect to paragraph 1, the view was expressed that the text within parentheses should be deleted. There was also the view that the first clause of the paragraph should be deleted and the concept that it expressed placed in the article on the definition of offences.

As regards the second clause of the paragraph, the point was made that only lawful acts of States should be excluded from the scope of the draft. It was suggested to delete the reference to non-proliferation, as well as to nuclear threats. Deletion of the phrase "or other subjects of international law" was also suggested, as was the deletion of the entire paragraph. There were proposals to replace the paragraph with one or more of the following provisions: a simplified version of the elements in current paragraph 1 (see A/AC.252/1998/WP.6); the first part of article 19, paragraph 2 of the Terrorist Bombings Convention (see A/AC.252/1998/WP.6 and WP.25); article 19, paragraph 1, of that Convention (see A/AC.252/1998/WP.6, WP.9 and WP.25); article 19, paragraph 2 of the Terrorist Bombings Convention as a whole; or article 12 of the Hostages Convention (see A/AC.252/1998/WP.25). These proposals gave rise to divergent views.

19. As regards paragraph 2, the suggestion was made to replace the phrase "belonging ... purposes" with "owned or operated by a State for non-commercial purposes" (see A/AC.252/1998/WP.9). It was further suggested to delete the reference to space objects (ibid.). The deletion of the entire paragraph was also proposed.

20. There were proposals to include two new paragraphs in the article, the first safeguarding the inalienable right of States to the peaceful use of nuclear energy, and the second (see A/AC.252/1998/WP.7) excluding the application of the proposed convention to purely internal nuclear terrorist acts. As regards the latter proposal, the point was made that crimes with transborder environmental effects should not be excluded from the scope of the draft.

Article 4

21. As regards paragraph 1, the view was expressed that the text should follow the language of article 15, subparagraph (a), of the Terrorist Bombings Convention. It was proposed to add the phrase "when they have obtained the relevant information" after "legislation". It was also suggested to include the phrase "knowingly finance" after "organize".

22. Concerning paragraph 2, the view was expressed that it should follow the language of article 15, subparagraph (b), of the Terrorist Bombings Convention.

23. While some supported the retention of paragraph 3 in its current form, others advocated its deletion. The suggestion was made to include the requirement that the recommendations of the International Atomic Energy Agency (IAEA) should be taken into account in the implementation of this paragraph (see A/AC.252/1998/WP.33), but reservations were expressed in that regard. While some delegations felt that the focus of the paragraph should be limited to measures to prevent illegal or unauthorized access to radioactive material (see A/AC.252/1998/WP.8), others favoured extending its scope to embrace measures against illicit trafficking (see A/AC.252/1998/WP.33). There was also a suggestion to make IAEA a focal point for consultation, cooperation and exchange of information under the paragraph (see ibid.).

Article 5

24. The view was expressed that paragraph 1 of that article should be recast as two separate paragraphs in the manner of article 6 of the Terrorist Bombings Convention, one paragraph setting out mandatory bases of jurisdiction and the other setting out bases of jurisdiction which were optional in nature (see A/AC.252/1998/WP.15 and 17). In this

regard, it was said that the grounds of jurisdiction that were the subject of subparagraph (a) and the first part of subparagraph (b) should be included in the paragraph that set out the mandatory bases of jurisdiction (ibid.). Differing views were expressed with regard to the grounds of jurisdiction addressed in subparagraph (c), some delegations favouring their inclusion as a mandatory basis of jurisdiction (see A/AC.252/1998/WP.15) and others preferring that they appear among the bases that were optional in nature (see A/AC.252/1998/WP.17). As for subparagraph (d) and the second part of subparagraph (b), it was said that the grounds of jurisdiction which they set forth should appear in the paragraph dealing with optional bases of jurisdiction (see A/AC.252/1998/WP.15; compare also WP.17). Support was voiced for the inclusion in that same paragraph of the grounds of jurisdiction set out in article 6, paragraph 2 (b), (see A/AC.252/1998/WP.15 and WP.17) and article 6, paragraph 2 (e) (see A/AC.252/1998/WP.15) of the Terrorist Bombings Convention. There was also a proposal that the texts of paragraphs 1 and 2 of article 6 of that Convention should replace the text of the current paragraph 1 in its entirety.

25. A number of proposals were made relating to the drafting of certain aspects of paragraph 1. Specifically, it was suggested: that the second part of subparagraph (a) should be recast along the lines of article 6, paragraph 1 (b), of the Terrorist Bombings Convention (see A/AC.252/1998/WP.15 and 17); that that phrase should be converted into a separate subparagraph (A/AC.252/1998/WP.15); that the opening words of subparagraph (c)should be amended so as to read "against that State or in order directly to compel it" (see A/AC.252/1998/WP.11; compare also WP.15); and that the words "connected with" in subparagraph (d) should be replaced by the formula "incorporated under the law of" (ibid.). With regard to the second category of victim referred to in that subparagraph, there was a suggestion that it should be made the subject of a separate subparagraph (see A/AC.252/1998/WP.15), though it was also proposed that mention should not be made of it among the possible bases of jurisdiction (see A/AC.252/1998/WP.17).

26. With regard to paragraphs 2 and 3, the suggestion was made that they should be aligned with the texts of article 6, paragraphs 4 and 5, of the Terrorist Bombings Convention (see A/AC.252/1998/WP.15 and 17). The suggestion was also made that a new paragraph should be added to the article, modelled on article 6, paragraph 3 of the same Convention (ibid.).

Article 6

27. The following provisions were suggested in replacement of paragraphs 1 and 2: (a) article 7 of the Terrorist Bombings Convention; (b) article 7, paragraphs 1, 2, 5 and 6 of the Terrorist Bombings Convention (see A/AC.252/1998/WP.28); (c) article 7, paragraphs 1 and 2, of the Terrorist Bombings Convention; (d) article 7 of the Terrorist Bombings Convention with the addition of the element of suppression. The view was also expressed that the issues of prevention and suppression should be dealt with in a separate article. A proposal was made to replace the notion of suppression with that of punishment. It was further suggested to replace the term "legislation" with "domestic law". There was the view that the article should provide for the submission of a case to an international criminal court.

28. The view was expressed that paragraphs 3 and 4 should be deleted (see A/AC.252/1998/WP.18 and WP.28).

Article 7

29. It was suggested to replace paragraph 1 with article 8, paragraph 1, of the 1997 International Convention for the Suppression of Terrorist Bombings (see A/AC.252/1998/WP.34 and WP.35).

30. It was also proposed to replace paragraph 2 with article 14 of the same Convention, which, some delegations felt, would better take the form of a separate article (see ibid.). In that connection, there was a suggestion to delete the words "provisions of" from the text of article 14 (see A/AC.252/1998/WP.28).

31. The proposal was made to insert an additional paragraph modelled on article 8, paragraph 2, of the Terrorist Bombings Convention (see A/AC.252/1998/WP.34 and WP.35).

Article 8

32. It was suggested that a refinement of the article was required. As to paragraph 1, the point was made that it could be subject to the laws of the requested State. Different views were expressed concerning the inclusion of a provision on multiple extradition requests like the one found in paragraph 5. Another proposal was to add the phrase "among other grounds provided under its national law" after "account" in the last sentence of paragraph 5.

33. Some delegations suggested that the article be replaced with article 9 of the Terrorist Bombings Convention. A proposal was also made to include a sixth paragraph (see A/AC.252/1998/WP.29).

Article 9

34. There was agreement to replace this provision with article 10 of the Terrorist Bombings Convention (note also A/AC.252/1998/WP.34).

Article 10

35. As regards paragraph 1, the Russian Federation noted that the reference to the feasibility of the return of nuclear components or products referred to the fact that they had not been destroyed. Furthermore, the State of ownership would have precedence for the return over the State of origin. It was also noted that the provision should address the obligatory nature of accepting return of the components or products.

36. The point was made that nuclear components or products should be returned to any State and not just States parties to the convention. Other delegations voiced their concerns about the difficulties that might arise if the return was obligatory in nature, since in some cases States were legally precluded from returning nuclear components or products. Similarly, the State in which the nuclear components or products are recovered may be prohibited from possessing them. The issue might be addressed by including the words "unless prohibited by international or domestic law" or by following article 5 of the 1980 Convention on the Physical Protection of Nuclear Material. The point was also made that the provision needed to address what happens when a State does not return an item and to ensure that such items were kept under appropriate safeguards. Some delegations stressed the need to take into account the role the International Atomic Energy Agency (IAEA) could

play on the matter, while others felt that States could take care of the matter themselves. A proposal was submitted for a new paragraph 1 (see A/AC.252/1998/WP.16). The view was expressed that a provision should be included regarding the need to address the issue of technical and financial assistance in order to carry out the return. The point was also made that it might be necessary to address the issue of restitution for damage resulting from the destruction of nuclear material.

37. Divergent views were expressed concerning the retention or deletion of paragraph 2.

Article 11

38. The view was expressed that the object of article 11 should be exchange of information with a view to suppressing and preventing acts of nuclear terrorism. A proposal was made to place articles 4 and 11 parallel to each other since the question of exchange of information went hand in hand with that of cooperation among States. The proposal was made for the information exchange to happen "as appropriate".

39. With regard to paragraph 1 (c) of article 11, the view was expressed that since States had a right to communicate any information, the subparagraph was superfluous and should be deleted. With regard to paragraph 3, a proposal was made to replace the term "domestic legislation" by "domestic law". Another proposal was made that paragraph 4 should provide the obligation of the depositary to act as a medium of exchange of information (see A/AC.252/1998/WP.21).

40. With regard to the role of the depositary, a proposal was to make the role of the depositary more specific. Another view was that the depositary should be the Secretary-General of the United Nations, and yet another view expressed preference for IAEA to serve the depositary function.

Article 12

41. The view was expressed that there was no equivalent provision in the 1997 International Convention for the Suppression of Terrorist Bombings, that the provision was considered to be superfluous and that it should therefore be deleted.

42. A proposal was made to insert the words "as appropriate" after the word "consult" and to delete the words "through mutual agreement".

43. A proposal was made to replace the words "through mutual agreement" with " through the depositary". The view was also expressed that article 12 should be incorporated into article 14 as a separate paragraph (see A/AC.252/1998/WP.27).

Article 13

44. The view was expressed that since the provision dealt with the relationship between the draft and general international law, it would be more appropriate to utilize the language of paragraph 1 of article 19 of the Terrorist Bombings Convention.

45. A question was raised as to the intended meaning of the words "or shall be directed against any State".

46. Another question was raised as to the meaning of the phrase "rights and obligations of States parties arising from international treaties concluded by them previously". In that

connection, the view was expressed that the corresponding provision of article 9, paragraph 5, of the Terrorist Bombings Convention had an opposite effect.

47. A proposal was made that the provisions of article 13 should be supplemented by the provisions of article 18 of the Terrorist Bombings Convention.

48. The view was expressed that since paragraph 1 of article 19 of the Terrorist Bombings Convention had been included in the current draft as part of the package, the last paragraph to the preamble to that Convention should also be included in the draft as part of the package.

49. The view was expressed that since paragraph 5 of article 9 of the 1997 Terrorist Bombings Convention only referred to the extradition of offenders, the current provision should be aligned to that provision in order to be consistent.

50. A proposal was made that articles 17, 18 and 19, paragraph 1, of the 1997 Convention should also be used in the current draft. Paragraph 2 of article 19 was however considered not to be relevant in this context and should therefore be excluded since it dealt with the activities of military forces. Others supported the inclusion of article 19, paragraph 2.

51. A proposal was made to supplement article 13 with provisions of articles 17 and 18 of the Terrorist Bombings Convention and that the words "or shall be directed against any State" should be deleted (see A/AC.252/1998/WP.27).

Article 14

52. With regard to article 14 of the draft, the Russian delegation clarified that some text has been inadvertently dropped from paragraph 3 and that it was intended to track exactly the corresponding provision in article 17 of the Physical Protection Convention.

53. The view was expressed that the language had been taken from article 18 of the Physical Protection Convention. The suggestion was made that, in order to be consistent, the provisions of article 20 of the Terrorist Bombings Convention should be used instead. A proposal was also made to combine paragraph 1 of article 17 of the 1980 Physical Protection Convention with article 20 of the 1997 Terrorist Bombings Convention.

54. A proposal was made to confine the object of declaration under paragraph 2 to compulsory arbitration set forth in paragraph 1 (see A/AC.252/1998/WP.31). A proposal was also made that article 14 should provide for more flexibility in the peaceful settlement of disputes along the lines described in Article 33 of the Charter of the United Nations.

55. A proposal was made to retain all the means of peaceful settlement of disputes stipulated in the Charter and that there should be no obligatory referral to the International Court of Justice (see A/AC.252/1998/WP.27).

Articles 5, 8, paragraphs 2, 11, 12, 13, 15 and 16 of the 1997 International Convention for the Suppression of Terrorist Bombings

Provisions in the 1997 International Convention for the Suppression of Terrorist Bombings with no direct equivalent in document A/AC.252/L.3

56. The Working Group discussed the possible incorporation of certain provisions of the 1997 Terrorist Bombings Convention that had no direct equivalent in the working document.

57. Support was expressed for the inclusion of article 5, and was pointed out that that provision formed part of a package together with articles 11 and 12 (see para. 3 below). Opposition, however, was voiced to its inclusion. It was also proposed to amend the article by deleting the phrase "in particular ... nature and". This proposal was also objected to. The suggestion was made to replace the phrase "by consideration ... other similar nature" with "regardless of where, by whom and for what purposes they are committed" (see A/AC.252/1998/WP.39).

58. With respect to article 8, paragraph 2, the proposal was made to insert an additional paragraph modelled on it (see A/AC.252/1998/WP.34 and WP.35).

59. Concerning article 11, some delegations supported its inclusion (see A/AC.252/1998/WP.34). Other delegations conditioned such inclusion on the incorporation also of article 12 of the 1997 Terrorist Bombings Convention. It was also stated that the inclusion of article 11 was dependent on the insertion of article 5 as well as of article 12 of that Convention. On the other hand, there were delegations that considered any decision on the matter to be premature pending a decision on the definition of the offences to which the document would apply.

60. There was support for including article 12 of the Convention. The view was expressed, however, that the application of the article should be limited to cases of extradition. It was also suggested to insert at the beginning of the article the phrase "without prejudice to article 7, paragraph 1" (see A/AC.252/1998/WP.37). On the other hand, reservations were voiced regarding the inclusion of article 12. It was argued that if this article was retained, the reference therein to "mutual legal assistance" should be deleted.

61. Support was expressed for the inclusion of article 13 (see A/AC.249/1998/WP.34).

62. With respect to article 15, the view was expressed that any decision on its inclusion was premature absent an agreement on definitions. There was also the view that subparagraphs (a) and (b) of the article should be included in the working document in lieu of its articles 4 and 11.

63. There was support for including article 16. Some delegations were of the view that the International Atomic Energy Agency (IAEA) should serve as a conduit for the communication of information under the article, either in addition to, or instead of, the Secretary-General of the United Nations.

Articles 15 to 20

64. The Russian Federation noted that the final clauses of the draft had been based on those found in the 1980 Physical Protection Convention, but that there were several blank spaces that would have to be filled. The draft's final clauses differed from those in the 1997 International Convention for the Suppression of Terrorist Bombings, in that the former allowed for the participation of international organizations (article 15, para. 4), had a specific procedure for amending the convention (article 17) and referred to the functions of the depositary (article 19).

65. Concerning article 15, the point was made that a final date should be set for signing the convention. In that regard, it was suggested that the article should follow the wording of article 21 of the Terrorist Bombings Convention. It was also suggested that article 15 be replaced with article 21 of the Terrorist Bombings Convention in its entirety.

66. As regards article 15, paragraph 3, the view was expressed that accession to the convention should not be conditional upon its entry into force and could therefore follow

the wording of article 21 of the International Convention for the Suppression of Terrorist Bombings.

67. With respect to article 15, paragraph 4, doubts were expressed about having international organizations as parties to the convention. The International Atomic Energy Agency (IAEA) noted in this regard that the Agency was not a party to any convention.

68. As regards article 16, it was pointed out that the reference to the instrument of "accession" should be incorporated into both paragraphs 1 and 2. There were divergent views regarding the number of ratifications required for the entry into force of the convention.

69. Concerning article 17, it was noted that there was a need for greater precision as to the kind of majority that would be required to convene a review conference of the convention.

70. As regards article 18, it was suggested that the wording of article 23, paragraph 2, of the Terrorist Bombings Convention be used, so that the denunciation would take effect one year after the respective notification.

71. A proposal was made to delete article 19. A proposal was also made to delete article 19, paragraph (d).

72. Concerning the blank spaces in the first part of article 20, it was suggested to include "six working languages of the United Nations" and "Secretary-General of the United Nations". IAEA stated that it was ready to fulfil its role as depositary should that be the will of the Ad Hoc Committee.

Statement by the International Committee of the Red Cross

73. The representative of the International Committee of the Red Cross (ICRC) made a statement to the working group in which he touched on the proposals to incorporate provisions modelled on the first part of article 19, paragraph 2, of the International Convention for the Suppression of Terrorist Bombings and on article 7, paragraph 5, of that Convention. With regard to the latter proposal (see A/AC.252/1998/WP.28), he emphasized that ICRC, while welcoming the incorporation of a provision of the type proposed, would only make the visits it contemplated under certain conditions. Specifically, it should be understood that ICRC was free to accept or to refuse an invitation to make such a visit and that it would in principle agree to make a visit only if the detainee was not able to be visited by representatives of her or his State. Before it made a visit, ICRC would also need the agreement both of the detaining State and of the detainee. In making any visit, ICRC would not be acting on behalf of the State that requested that it make the visit, but independently and as a neutral intermediary. It would conduct visits in accordance with its standard criteria. In particular, it would expect to be allowed to interview detainees in private, without witnesses. It must also be able to repeat any visit.

Future work

74. It was pointed out that further analysis was required as regards the impact which the creation of a new convention would have on existing international instruments, particularly the Convention on the Physical Protection of Nuclear Material of 1980, the International Convention for the Suppression of Terrorist Bombings of 1997 and the Nuclear Non-

Proliferation Treaty. The new regime should not, it was said, affect existing obligations under the Charter of the United Nations or international humanitarian law.

75. A suggestion was made that, without prejudice to the positions of respective delegations on the proposed convention, the Committee request the Bureau to prepare a draft revised text of the convention based on the work carried out during the session, taking into account, in particular, the discussion on the relevant provisions of the 1980 Convention on the Physical Protection of Nuclear Material and the 1997 International Convention for the Suppression of Terrorist Bombings.

76. Some delegations expressed preference for an expansion of the scope of the existing conventions, both in substantive and geographic terms, with emphasis on preventive and protective aspects. It was suggested that, if the Committee were to agree on the need for a new convention, the provisions of the existing draft would have to be strengthened to provide for better physical protection measures.

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